85-888(2)

IN THE

Supreme Court of the United States

October Term, 1985

No. _____

LONNIE L. ATKINS; PHILLIP PETERSON; D. W. THOMPSON; G. R. GIBSON; B. W. PAYNE; J. E. SMITH; C. R. MOWBRAY; J. H. THOMPSON; G. R: WERTZ; R. E. COOPER; A. L. HARTWELL; and B. L. FULLER; on behalf of themselves and all others similarly situated,

Petitioners,

v.

TIMES-WORLD CORPORATION; ROANOKE TYPOGRAPHICAL UNION NO. 60; and INTERNATIONAL TYPOGRAPHICAL UNION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT TIMES-WORLD CORPORATION'S BRIEF IN OPPOSITION

Clinton S. Morse
Woods, Rogers & Hazlegrove
105 Franklin Rd., S. W.
P. O. Box 720
Roanoke, Virginia 24004
(703) 982-4288
Counsel for Respondent Times-World Corporation

Opp

TABLE OF AUTHORITIES

CASES

IN THE

Supreme Court of the United States

October Term, 1985

No. _____

LONNIE L. ATKINS; PHILLIP PETERSON; D. W. THOMPSON; G. R. GIBSON; B. W. PAYNE; J. E. SMITH; C. R. MOWBRAY; J. H. THOMPSON; G. R. WERTZ; R. E. COOPER; A. L. HARTWELL; and B. L. FULLER; on behalf of themselves and all others similarly situated,

Petitioners,

v.

TIMES-WORLD CORPORATION; ROANOKE TYPOGRAPHICAL UNION NO. 60; and INTERNATIONAL TYPOGRAPHICAL UNION,

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT TIMES-WORLD CORPORATION'S BRIEF IN OPPOSITION

The respondent Times-World Corporation respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Fourth Circuit's opinion as reported at 771 F.2d 829.

This case of distinctly humble origins arose from the temporary lay-off for approximately three months of

three employees who worked for and continue to work for Respondent Times-World Corporation, a newspaper publisher located in Roanoke, Virginia. At the time of the lay-off, Respondent Union No. 60, supported by Respondent International Union, filed a timely grievance alleging that such lay-offs were a breach of an addendum to a collective bargaining agreement covering such employees. Thereafter, pursuant to the grievance and arbitration provisions of the collective bargaining agreement, the parties processed this grievance to arbitration and selected as the arbitrator Mr. James P. Whyte, former Dean and Professor of Law at Marshall-Whyte School of Law, College of William and Mary, and an otherwise thoroughly experienced and well-regarded arbitrator. In the course of this orderly handling of a routine labor dispute, two of the employees who had been laid off instituted the present action alleging breach of the addendum to the collective bargaining agreement and fraud and seeking some $32 million in compensatory and punitive damages. Their complaint raised precisely the same issues that were being presented pursuant to the grievance and arbitration procedure. After respondent Times-World Corporation filed a motion to dismiss the complaint on the ground that the lay-off dispute was subject to mandatory binding arbitration as agreed by the parties to the bargaining agreement, plaintiffs filed an amended complaint to add a number of named plaintiffs and to join Respondents Union No. 60 and the International Union and seeking $42 million in compensatory and punitive damages. In their amended complaint, plaintiffs included the novel claim against Union No. 60 and the International Union that by seeking to utilize the grievance and arbitration procedure of the contract to resolve the dispute, the Unions had breached their duty of fair representation to the employees in question. The other facts

relevant to this case are fully set forth in the opinion of the Fourth Circuit Court of Appeals and petitioners' writ application.

REASONS WHY THE WRIT SHOULD BE DENIED

1. There are no special and important reasons to grant a writ of certiorari since the decision of the Fourth Circuit Court of Appeals is entirely in accord with the applicable decisions of this Court.

Respondent Times-World Corporation will not grace the present petition for writ of certiorari with an extended response. Rather than presenting any important legal issue, the instant case under black letter principles of labor law should never have been filed at all.

Realizing that their procedural issue presents a wholly meaningless controversy unless they can muster a legitimate challenge to the substantive ruling of the appeals court, petitioners advance as their second reason for granting the writ that the Fourth Circuit's resolution of this case "without an evidentiary hearing on petitioner's well pleaded allegations of a breach of fair representation by the local and international unions was contrary to this Court's [prior] holdings." However, as acknowledged by petitioners before the Fourth Circuit and as recounted in that court's decision, "The printers raise several issues but concede that a finding that the addendum is part of the collective bargaining agreement would resolve all the issues against them and require them to resort to arbitration." Indeed, if the addendum were part of the collective bargaining agreement, then the employees were bound to exhaust the grievance and arbitration

procedure under the agreement to resolve their dispute with their employer. E.g., *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976). Thus, Respondent Union No. 60 and the International Union could hardly be scored for pursuing the only appropriate remedy available to the employees to resolve the propriety of the lay-offs in question.

Having drawn the issue, the Fourth Circuit, in an analysis thoroughly set out in its opinion, easily concluded that the addendum was part of the collective bargaining agreement and that petitioners' grievance was thus arbitrable. In their application to this Court, petitioners in no way challenge the correctness of this fundamental conclusion.

Instead, they are content to renew the untenable argument that the Unions breached their duty of fair representation by recognizing that the grievance was arbitrable and pursuing the employees' arbitration remedy. It is true that this Court has permitted employees to bring § 301 actions where there was evidence that a Union had arbitrarily failed to pursue an employee's arbitration remedy, but neither this court nor any other court has ever ruled that a union could be guilty of a failure to represent by, in fact, diligently pursuing such course. Nor is there any authority that a union which is pursuing an employee's arbitration remedy can be charged with a failure to represent even before the arbitration process is complete. In summary, petitioners' instant contention in no way commends itself to the attention of this Court.

Although petitioners are conclusively beaten on the merits, they nonetheless seek to further subvert and delay the arbitration process by enmeshing this Court in their procedural arguments which are themselves completely

meaningless. This Court has for decades recognized that arbitration is the cornerstone of industrial self-government. On this ground alone, the Court should not entertain the instant petition which is so plainly destructive of such principle.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

TIMES-WORLD CORPORATION

By_____

Clinton S. Morse
Woods, Rogers & Hazlegrove
105 Franklin Road, S. W.
P. O. Box 720
Roanoke, Virginia 24004

Counsel for Respondent
Times-World Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of December, 1985, three copies of Respondent Times-World Corporation's Brief in opposition were mailed, postage prepaid, to D. Gerald Coker, Esq., Ford & Harrison, 600 Peachtree Street, NE, Atlanta, Georgia 30309; to T. Keister Greer, 110 Maple Avenue, Rocky Mount, Virginia 24151, counsel for petitioners; to C. Barry Anderson, Esq., Goldsmith & Anderson, P. O. Box 892, Radford, Virginia 24141, counsel for Roanoke Typographical Union # 60; to Brian A. Powers, Esq., and Robert J. Henry, Esq., O'Donoghue & O'Donoghue, 4748 Wisconsin Avenue, NW, Washington, D. C. 20016; and to Harry F. Hambrick, Esq., Wilson, Vogel, Creasy & Hambrick, Suite 600, First Federal Building, P. O. Box 2420, Roanoke, Virginia 24010-2420, counsel for International Typographical Union. I further certify that all parties required to be served have been served.

Clinton S. Morse
Woods, Rogers & Hazlegrove
105 Franklin Road, S.W.
Roanoke, Virginia 24011